

## ADOT&PF EFH Process Guidance for Categorical Exclusions

When a project is anticipated to qualify as a Categorical Exclusion under 23 CFR 771.117, the Alaska Department of Transportation & Public Facilities (ADOT&PF) on behalf of the Federal Highways Administration (FHWA) will consult with National Marine Fisheries Service (NMFS) on all projects that may adversely affect Essential Fish Habitat (EFH). The following process will be followed for this consultation:

1. ADOT&PF will document the results of the EFH consultation in the Environmental Checklist. ADOT&PF in accordance with 50 CFR 600.920(c) has been the designated representative of the FHWA in the consultation process. The FHWA remains ultimately responsible for compliance.
2. As part of the initial scoping letter, ADOT&PF will notify NMFS of EFH resources that may be adversely affected by the proposed project.
3. In response to the ADOT&PF scoping letter, NMFS will provide EFH conservation recommendations as appropriate, and will request that ADOT&PF or FHWA initiate expanded consultation if NMFS believes that the proposed action does not include the NMFS conservation recommendations, if NMFS believes that the project may result in substantial adverse effects on EFH.
4. If necessary, additional coordination to resolve concurrence issues will be initiated. ADOT&PF will respond, in writing, within 30 days with respect to conservation recommendations.

*The response must include a description of measures proposed for avoiding, mitigating, or offsetting the impacts of the project on EFH, as required by 50 CFR 600.920(j). If the response is inconsistent with NMFS Conservation Recommendations the reasons for not following the recommendations must be explained, including the scientific justification for any disagreements with NMFS over the anticipated effects of the project or measures needed to avoid, minimize, mitigate or offset such effects.*

5. Transmittal of the approved Environmental Checklist to NMFS will be considered “Submittal of the EFH Assessment” under 50 CFR 600.920(h)(3). The checklist will include the necessary information. All **EFH Assessments** as outlined in 600.920(g) must contain the following: 1) a description of the proposed action; 2) an analysis of individual and cumulative effects of the action on EFH, the managed species, and associated species such as major prey species, including affected life history stages; 3) the Corps’ views regarding effects on EFH; and 4) a discussion of proposed mitigation, if applicable. Additional information, which may be appropriate to include in an EFH Assessment, is listed in 50 CFR 600.920(g)(3).

The steps outlined above address the abbreviated consultation procedures described in 50 CFR 600.920(h). If at any point in the process it is determined that the project would result in substantial adverse effects to EFH or that additional information/analysis is needed, expanded consultation procedures will be implemented. A party may request expanded consultation at any point in the process. The parties will determine how best to implement expanded consultation based on the specifics of the project. It is recognized that additional information may be required, that a site visit will be necessary and that conservation recommendations will need to be addressed. However, to the extent practical, existing project coordination procedures will be utilized to fulfill the requirements of expanded consultation.

If an FHWA decision is inconsistent with NMFS EFH Conservation Recommendations, 50 CFR 600.920(j)(2) allows the NOAA Assistant Administrator for Fisheries to request a meeting with the head of the FHWA to discuss the proposed action and opportunities for resolving any disagreements. NMFS will endeavor to resolve any such issues at the field level wherever possible, typically in a meeting between the NMFS Regional Administrator and the FHWA Division Administrator.